

APPENDIX**AMENDED MOTION TO DISMISS INDICTMENT**

Filed September 3, 1963

Defendant above named hereby moves the court for an order dismissing the indictment in the above entitled case on the ground that it fails to charge an offense for the following reasons:

1. That the statute upon which said indictment is based, that is, section 5 (a) (1) (D) of the Internal Security Act of 1950, (50 U.S.C. Sec. 784 (a) (1) (D)) is void on its face as a direct abridgment of the freedoms protected from Congressional interference by the First Amendment to the Constitution of the United States;
2. That the section is void on its face as a statute which without due process of law takes away, or purports to take away, liberty and property, particularly the liberty and property embodied in the right of a person to enter into a contract for gainful employment, such denial of due process being contrary to the provisions of the Fifth Amendment;
3. That the section is void on its face in that it is impossible to ascertain from the statute what conduct, if any, could, would, or does constitute a criminal act under it, and by reason of this vagueness as to what constitute the elements of the conduct purportedly prohibited by it, the statute deprives a person charged under it of due process of law contrary to the Fifth Amendment;
4. That the section on its face, and as applied in this indictment, is void in that the alleged designation of the Communist Party of the United States of America as a "communist action organization":

(a) fails by so designating the Communist Party in administrative proceedings conducted without any notice of any kind to the defendant to afford defendant notice, hearing or opportunity to be heard, and of the right of confrontation of witnesses and cross examination with respect to an essential element of this indictment, thus depriving defendant of due process of law in violation of the Fifth Amendment; and

(b) fails to set forth or charge facts to be considered by the jury as to the nature of the Communist Party, and particularly as to whether the Communist Party is, in fact, a "communist action organization" as defined by the statute, thus depriving him of a jury trial on an essential element of the charge, in violation of the Sixth Amendment; and

(c) fails to allege or show that any reasonable relationship exists between a public or national interest which can be constitutionally protected and the means sought to be applied by this statute to protect such interest; that is, the administrative proscription of the Communist Party and the consequential proscription of defendant's freedom to contract for gainful employment as an alleged member of such political party.

5. The section on its face, and as construed and applied in this indictment, is void in that in designating Todds Shipyards Corporation, Seattle Division, Seattle, Washington, as a defense facility:

(a) the Secretary of Defense acted without any notice to defendant and thus has deprived him of due process of law contrary to the Fifth amendment; and

(b) the Secretary of Defense has designated all employment within Todds Shipyards Corporation, Seattle Division as prohibited to members of the Communist Party and thus has unreasonably and arbitrarily excluded, or attempted to exclude, persons from employment, without any relationship being shown, alleged, or existing between

any lawful and constitutional objective and the means sought to achieve such objective, thus depriving defendant of due process of law in violation of the Fifth Amendment; and

(c) fails to provide for a jury determination of whether the employment of defendant involves any question of the security of a national defense establishment, thus depriving him of a jury trial on an essential element of the indictment, contrary to the provisions of the Sixth Amendment.

6. The act as a whole, and section 5 (a) (1) (D) on its face, and the act and section as applied in this indictment, are void as a bill of attainder, attainting and proscribing by legislative or executive fiat, and without judicial process, a class of persons who have not been convicted of any crime, yet who are subjected to criminal penalties and made felons in the guise of regulation of lawful conduct and by prior non-judicial determinations applicable to such persons as an easily identifiable class, all contrary to the provisions of Article I, Section 9, third paragraph of the Constitution of the United States.

7. The act and the section of the act here applied, both on its face and as applied in this indictment, is void for repugnance to the Constitution, being violative of the First, Fifth and Sixth Amendments and Article I, Section 9, among other sections, in that, on its face and as applied it constitutes arbitrary and unreasonable classification of places of employment where members of the Communist Party may not work, unconstitutionally delegating broad and unlimited legislative powers to administrative officers and the private individuals and otherwise violating the Constitution.

8. The indictment in this case fails to charge an offense against the United States for the reason, among other reasons, that it fails to set forth and state certain essential elements of the offense charged, including among

others, the failure to allege that the Communist Party is, in fact, a communist action organization as defined in Section 3 of the act.

Dated this 29th day of August, 1963.